

FILED
REVISED REGULATIONS

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Title 265 - WATER MANAGEMENT BOARD

Chapter 1 - GENERAL PROVISIONS

001 Purpose and Effect of Regulations. These regulations are adopted for the purpose of carrying out the provisions of sections 2-15,107 to 2-15,117 and 2-4501 to 2-4528, R.S. Supp. 1984, and amendments thereto, relating to the approval of water projects costing more than ten million dollars, not including operation and maintenance costs, for state funding from the Water Management Fund and/or state advocacy. These regulations shall not be construed as a limitation upon the exercise of any powers or duties, or upon the exercise of any proper discretion that is vested in the Water Management Board by sections 2-15,107 to 2-15,117, or 2-4501 to 2-4528, R.S. Supp. 1984, and amendments thereto, nor as a limit upon the amount or character of data or information which may be required by the Water Management Board for the proper administration of its duties.

002 Definitions. As used in these regulations, the terms listed below shall have the meanings noted:

002.01 "Act" shall mean sections 2-15,107 to 2-15,117 and 2-4501 to 2-4528, R.S. Supp. 1984, and amendments thereto.

002.02 "Authorized representative" shall mean the individual designated by the sponsor(s) to represent the sponsor(s) in all matters related to the project for which state financial assistance and/or state advocacy is sought.

002.03 "Board" shall mean the Water Management Board created by section 2-15,108 R.S. Supp. 1984.

002.04 "Chairperson" shall mean the Director of Natural Resources created by section 2-1504.03, R.S. Supp. 1984.

002.05 "Eligible local costs" shall mean those non-federal project costs which the sponsor would be required to pay if funding assistance was not available from the Water Management Fund but shall not mean operation, maintenance, and replacement costs.

FILED
Allen J. Beermann
Secretary of State
MAR 26 1986

APPROVED:
Date 3-26-86
Bob Kerrey
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL
MAR 18 1986
BY [Signature]
Assistant Attorney General

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002.06 "Eligible projects" shall mean water projects costing more than ten million dollars, exclusive of operation and maintenance costs, including, but not limited to, projects which are primarily for the development and/or management of water supplies for the following purposes: domestic, agricultural, municipal, industrial, manufacturing, ground water recharge, fish and wildlife, water quality, or recreational uses, the production of electric power, erosion control, flood control and stormwater management.

002.07 "Fund" shall mean the Water Management Fund created by section 2-15, 117, R.S. Supp. 1984.

002.08 "Governing body" shall mean the individual or group of individuals empowered by law to govern the business of a sponsor.

002.09 "Intangible benefits" shall mean benefits that cannot be expressed in monetary terms.

002.10 "Obligation of funds" shall mean the actual commitment of money appropriated by the Legislature to, or otherwise available in the Fund, for the payment of the Board's share of eligible local costs for project planning or construction.

002.11 "Primary benefits" shall mean the value of increases in products and services and the reduction in damages, losses or costs that are a direct result of a project, minus any costs, other than project costs, which must be incurred to realize those benefits.

002.12 "Separable component" shall mean any distinguishable phase of project development including such phases as land rights acquisition, project construction, related facilities development, or the construction of project features on non-contiguous parcels of land.

002.13 "Sponsor" shall mean a political subdivision which has the authority to develop the state's water resources and which is primarily responsible for the development, administration, operation, and maintenance of a project for which assistance from the Fund or state advocacy is requested.

002.14 "Tangible benefits" shall mean benefits of a project that can be expressed in monetary terms.

002.15 "Tentative allocation" shall mean the amount of money the Board will provide a sponsor for project planning or construction assistance if funds are made available by the Legislature or can be obtained from other sources. The approval of a tentative allocation shall not constitute a legal obligation of the Board to provide the amount of money allocated for a project.

003 Designation of Meeting Dates and Notification Thereof. Meetings of the Board will be called by the Chairperson. A request to the Chairperson from two Board members asking that a meeting be called will be honored by the Chairperson. The Chairperson shall cause due notice to be publicized and transmitted to each Board member no less than fourteen (14) days prior to the meeting except in the event an emergency meeting must be held. Board members shall simultaneously be provided with copies of a tentative agenda and other relevant material. Notice and conduct of all Board meetings shall be in accordance with the Nebraska Open Meetings Law, sections 84-1408 et. seq. R.R.S. 1943, and amendments thereto.

004 Parliamentary Rules. The Board shall conduct its business in accordance with Roberts Rules of Order except insofar as they may be inconsistent with these regulations, provisions of the Act, or other provisions of state law.

005 Administrative Staff Assistance. The Chairperson shall furnish one member of his or her staff to act as staff assistant for the Board. This person will be responsible for the recording of minutes and their subsequent distribution to all Board members and other concerned parties. The Chairperson shall furnish such other staff assistance as is necessary to assist the Board in carrying out its duties. The Chairperson shall establish such committees from his or her staff as he or she deems necessary.

006 State Agency Staff Assistance. In furtherance of the Board's duties, the Chairperson may at any time request staff assistance from any state or federal agency or political subdivision of the state beyond that which is

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required by section 2-15,115 R.S. Supp. 1984. The type and degree of any assistance provided shall be at the discretion of the head of such agency or governing body of such political subdivision.

007 Public Participation. Individuals, groups, political subdivisions and state and federal agencies may request the opportunity to address the Board on matters relevant to the business of the Board. All persons shall be given reasonable opportunity to be heard on matters relevant to the business and purpose of the Board. Requests for placement of an item on the agenda should be made to the Chairperson at least ten days prior to any regularly scheduled Board meeting. The addition of any item to the agenda shall be at the discretion of the Chairperson. The Board may conduct public meetings specifically for the purpose of obtaining comments from the public or other interested political sub-divisions or agencies. Notice of any such meeting shall be provided in accordance with the appropriate provisions of law. Upon receipt of any application for financial assistance or advocacy from the Board, reasonable means shall be employed by the Chairperson to inform interested persons, groups, political subdivisions, and state and federal agencies that an application has been received and the opportunity to comment and provide relevant information shall be provided. All applications shall be reviewed in a non-judicial setting as required by section 2-15,116 R.S. Supp. 1985.

008 Public Hearing on Rules and Regulations: Presiding Officer:
Appointment of Hearing Examiner. The Chairperson or a designated Board member shall serve as presiding officer at any hearing conducted by the Board. The presiding officer may appoint a hearing examiner for the purpose of assisting in the conduct of the hearing.

008.01 Duties and Responsibilities of Presiding Officer or Hearing Examiner. The presiding officer or hearing examiner shall among other things, open the proceedings; enter into the record the notice given of the hearing; take appearances; accept and see that exhibits are

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properly numbered; answer questions asked or call upon other persons present to answer questions asked; and close the proceedings. The presiding officer and hearing examiner have no power to take any action involving a final determination from the proceedings when action by law is required by the Board. The record in any hearing shall not be affected by any change of presiding officers or examiners during the conduct of that hearing.

008.02 Evidence Admissable. No person shall be required to be sworn or take an oath prior to presenting any evidence, which may consist of any oral or written question, statement or testimony and any document.

008.03 Persons Presenting Evidence. All persons presenting evidence at a hearing shall first state their full name and declare whether they are appearing on their own behalf or on behalf of another person or organization, in which case such person or organization represented shall be named.

008.04 Exclusion of Evidence. All evidence presented at the hearing is to be directed at the business and purpose of the hearing. Any evidence not directed at the business and purpose of the hearing, or which is cumulative or repetitive, may be terminated and excluded from the record.

008.05 Presentation of Evidence by Board Members and Staff. In addition to statements and evidence presented by any other person, the Board may, through Natural Resources Commission staff or otherwise, secure and present such statements and evidence as it may consider necessary or desirable. Evidence shall include a copy of notice given for the public hearing and a statement explaining the business and purpose of the hearing.

008.06 Record of the Hearing. A record shall be made of the hearing proceedings with the evidence presented being a part thereof. Such record may consist of written statements and any other documentary evidence along with tape recordings of oral evidence or such transcripts as deemed necessary by the Board.

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008.07 Holding Hearings Open. The record of public hearings may be held open at the discretion of the presiding officer for submission of any evidence not available or presented at the time of the hearing. At the designated time the hearing shall be closed by the presiding officer or hearing examiner after the inclusion of any evidence submitted and accepted.

009 Petition for Adoption, Repeal or Amendment of Rule and Regulation. Any interested person, political subdivision or agency may petition the Board to adopt, repeal or amend a rule. Such request shall be in the form of a signed letter to the Chairperson specifying the rule sought to be adopted, repealed or amended and, where appropriate, the suggested wording of any such rule. Any petition received will be forwarded to the Board for its consideration and action.

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

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BY *Lincoln Stevens*
Assistant Attorney General

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Allen J. Beermann
Secretary of State
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Governor